phrenia. It is thus defined by *Simpson* on Forensic Medicine:—

"Paranoia, a systemic delusional insanity, may have grave criminal associations. Subjects of the disease shade imperceptibly from those who can perceive the falsity of their frequent misrepresentations of the trivial happenings of the day to those who become obsessed by such delusions and develop persecutory mania. They may single out an individual for assault to redress their grievances, or address themselves in important phrases to prominent people, take action, and allege bribery and corruption among the judges who dismiss such actions. Everyone's hand is against the wretched victim, but his spirit is aggressive and his intellect otherwise sound, so he may secure adherents for his incurable 'righting of wrongs'."

The appellant's case was clearly diagnosed by the only medical expert called as one of paranoia, leading to delusions — a condition liable to worsen with advancing years. Paranoia was the defence. Its meaning cannot be comprehended by the common juror without any assistance and such assistance was not forthcoming.

For the reasons stated above, the conviction and sentence would be set aside and the order of the court made that the appellant be confined in safe custody pending an order of the Governor.

Order accordingly.

Solicitors: *Nath & Co.*

SENG HENG ELECTRICAL v. CHUA LEN TENG

[F.C. (Ong Hock Thye C.J. (Malaya) Ali F.J. & Yong J.) September 10, 1969]

[Kuala Lumpur — Federal Court Civil Appeal No. X. 28 of 1969]

Practice and Procedure — Appeal — Question of fact — Whether appeal judge can substitute his own opinion for that of the trial magistrate.

The appellants had brought an action to claim the sum of $943 for an electrical installation and a plumbing job. The respondent denied that the work was done at his request, his case being that if any contract was made it was between the appellants and the building contractor. The learned magistrate found for the appellants, but his decision was reversed by the High Court on appeal.

Held, allowing the appeal: the appeal judge was not justified in substituting his own opinion for that of the magistrate where the credibility or reliability of one or more witnesses has been in dispute and where a decision on these matters has led the trial magistrate to come to his decision as a whole; therefore the appeal must be allowed and the judgment of the learned magistrate restored.

Cases referred to:—

(1) *Benmax* v. *Austin Motor Co. Ltd.* [1955] A.C. 370, 375.

(2) *Thomas* v. *Thomas* [1947] A.C. 484, 487-8.

FEDERAL COURT

D.A. Devadason for the appellants.

H.B. Ball for the respondent.

Ong Hock Thye C.J. (Malaya) (delivering the judgment of the court): On June 9, 1969 we allowed this appeal and restored the judgment of the learned magistrate at Malacca. We now state the grounds of our decision.

On June 1, 1955 Y.Y. Chang Construction, a firm of building contractors, agreed to build a house for the respondent at the price of $13,000, inclusive of all fittings and electrical installations. The house was completed in November and on the 26th of that month the tenant to whom it was let entered into occupation.

The electrical installation had been carried out by the appellants, together with a minor plumbing job, for which a balance of $943 remained unpaid. This sum was claimed from the respondent in the magistrate's court at Malacca on the ground that the work had been done at his request. The respondent's defence was a denial, his case being that, if any contract was made, it was between the appellants and the building contractor. The magistrate found for the appellants, but his decision was reversed by the High Court on appeal. The appellants then appealed to this court.

Plainly the question to be determined in the action was a question of fact, depending on the view of the trial court as to the credibility of the witnesses. Not only did the learned magistrate believe the appellants, but he also took into particular consideration the evidence of Mr. Fernandis "a responsible and senior Government official", who was an independent witness. The latter had been approached by the appellants to use his good offices to obtain payment and accordingly had seen both parties to arrange a settlement. He testified that he had been told by the respondent of the contractor absconding, which had put the respondent in difficulties; however "he would try to settle by raising a loan — no amount was mentioned". The respondent admitted meeting Mr. Fernandis but denied having spoken to him as alleged. He was unable, however, to explain why Mr. Fernandis should so testify against him, nor did he tell the court what explanation he gave Mr. Fernandis for denying liability. It is not surprising, therefore, that the learned magistrate preferred to believe the appellants and their witnesses.

The learned judge, however, took the view that Mr. Fernandis had erred as to the date of his interview with the respondent, and on that account his testimony was untrustworthy, since final payment to the building contractors had

already been made on the date of the alleged interview and there was no need for the respondent to raise any loan. In the result, after considering the conflict of evidence regarding certain documents, the judge came to the conclusion that "on the preponderance of evidence the learned magistrate was wrong in coming to the conclusion that there was an oral agreement between the respondents and the appellant".

With respect, we do not think that he was justified in substituting his own opinion for that of the magistrate "where the credibility or reliability of one or more witnesses has been in dispute, and where a decision on these matters has led the trial judge to come to his decision as a whole,": see *Benmax v. Austin Motor Co. Ltd.*,[1] *per* Lord Reid. Citing *Thomas v. Thomas*[2] his Lordship recalled this passage from the speech of Lord Thankerton:—

"Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion."

It may be observed that the magistrate did find as a fact that the building contractor had absconded. In our view there were no sufficient grounds for the judge to come to a conclusion which contradicted this finding of fact. If it was true that the contractor was still around, and the payment for electrical installation was his responsibility under the contract, why, it may be asked, had the respondent to offer his wife as guarantor to the firm supplying the appellants with the materials required for the job?

Having perused the whole of the evidence we must say, with all respect, that the judgment of the learned magistrate should be restored. The appellants will be entitled to costs throughout.

Appeal allowed.

Solicitors: *D.A. Devadason; Allen, Gledhill & Ball.*

TEE THAN SONG v. CALTEX OIL MALAYSIA LTD.

[F.C. (Ong Hock Thye C.J. (Malaya), Gill & Ali F.JJ.) September 10, 1969]

[Kuala Lumpur—Federal Court Civil Appeal No. X. 51 of 1969]

Practice and Procedure — Injunction — Interlocutory injunction — Granting of — Licence to carry on service station — Termination of.

Licence — Termination of — Whether licensee entitled to rely on equitable relief.

This was an appeal against the order of the High Court ([1969] 2 M.L.J. 184) granting an interlocutory injunction restraining the appellant, his servants and agents from remaining on the respondents' service station. The respondents had entered into an agreement with the appellant whereby the appellant was granted a licence to occupy the service station. This licence had been terminated by the respondents. On appeal,

Held, dismissing the appeal: on the revocation of the licence the appellant became a trespasser on the premises and the learned trial judge was correct in granting the interim injunction.

Cases referred to:—

(1) *Campbell Discount Co. Ltd.* v. *Bridge* [1962] A.C. 600, 614.

(2) *Thomson* v. *Park* [1944] 1 K.B. 408, 410.

(3) *Wood* v. *Leadbitter* (1845), 13 M. & W. 838.

(4) *Kerrison* v. *Smith* [1897] 2 Q.B. 445.

FEDERAL COURT

Dato' Athi Nahappan for the appellant.

Harry Elias for the respondents.

Cur. Adv. Vult.

Ong Hock Thye C.J. (Malaya): This is an appeal against an order of the High Court granting an interlocutory injunction restraining the appellant his servants and agents from remaining upon the respondents' service station or removing any equipment therefrom until determination of the action between these parties.

Caltex, the respondents, are owners of a service station on Cheras Road, Kuala Lumpur. In August 1963 they entered into an agreement with the appellant whereby he was granted a licence "as a vendor of the company's products to enter upon and use the service station in common with the company during the continuance of this agreement solely and entirely for the purpose of carrying on the retail sale of the company's products at the service station subject to the terms and conditions contained in this agreement". By clause 16 it was provided that the agreement "may be terminated by either party on giving to the other 30 days previous notice to that effect, whereupon the licensee shall leave the premises within 30 days from the date of the receipt of the said notice by either party".

In November 1963 a second agreement was made between the parties for the loan of machinery and servicing equipment required for operating the service station. Clause 3(1) provided that the agreement "may be terminated by the company at any time giving to the licensees not less than 30 days previous notice in writing".

Pursuant to these clauses in the two agreements Caltex gave the appellant notice in